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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,707	12/10/2003	Andrea Wooten	DMJ0302100	2081
7590 12/30/2005			EXAMINER	
Delphine M. James Attorney-at-Law Suite 170 2656 South Loop West Houston, TX 77054			HALE, GLORIA M	
			ART UNIT	PAPER NUMBER
			3765	
DATE MAILED: 12/30/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

### Office Action Summary

Application No.

10/732.707

**Applicant(s)**

WOOTEN, ANDREA

**Examiner**

**Gloria Hale**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 8-8-05 Amendment.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 12-17, 22 and 23 is/are rejected.
- 7) ☒ Claim(s) 9-11 and 18-23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claim 7 has been canceled. Claims 1-6 and 8-23 remain in the application.

#### ***Specification***

The disclosure is objected to because of the following informalities: The amendment to paragraph 14, line 10 should be "hook and loop fastener". VELCRO is known as a hook and loop fastener and not a hook and eye. On page 2, line 1, the "should be changed to - that - - -".

Appropriate correction is required.

The amendment filed 8-8-04 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: that " a pressure point is a "pocket of foam material" to support the pressure areas of the upper are of the back.

Applicant is required to cancel the new matter in the reply to this Office Action. The original disclosure only described the pressure points on page 4 as being a plurality of small points spanning the entire surface area". It was not disclosed that they were pockets of foam material.

#### ***Drawings***

The drawing correction received on 8-8-05 has been approved.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 and 8-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 17 "members" should be changed to - - member - -. In claim 19 it is not clear as to what the breast cup fastener is secured to since the cooperating fastener member on the back portion has not been claimed. In claim 2, line 4, "the" should be deleted. In claim 6, line 1 "is" should be inserted after "layer". In claim 8, there is no support in the specification for the inner layer of the back portion as having a plurality of pressure points. The specification on page 4 only states that the back portion comprises points on the entire surface area but no specifically on the inner layer. This is new matter. In claim 14, line 4, "the inner surface" should be changed to "an inner surface" to avoid antecedent basis problems. In line 9, "members" should read - - member - -. There is no antecedent basis for "the internal peripheral edge" as in lines 9-10. In lines 11-12 it is not clear as to how the cooperating fastening members are secured since only the breast cup member has been claimed and not a cooperating fastener in the back panel. In claim 15, line 2, there is no antecedent basis for "the outer peripheral edge of each support member". In line 3, after "side" insert - -of -- -. In claim 19, line 1 insert - is - - after layer. In claim 20, there is no antecedent basis in the specification that the back has a plurality of pressure points on the inner layer. It is only described as

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being on the surface but not on an inner layer. In regard to claims 20 and 21, it is not clear as to how the "pressure points" are formed. However, the language added to the specification is now new matter in regard to the "pockets" since it was not previously/originally disclosed as being pockets in the original specification or shown in the original drawings. This must be added in a continuation in part application in order to be claimed as being foam within pockets. Only the inner layer of solid memory foam was originally disclosed. However, the claims, as best understood, have been examined on their merits.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 12-15, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Witkower (US 2,421,448).

Witkower discloses a breast support apparatus including at least one layered front portion 6, two breast cups 7 with an inner layer abutting the breast ( 7 as seen in figure 2) with a mid-section ( not #'ed), lower section (not #'ed) and a side edge (at seams 15). Witkower includes a support member 40,41 secured to the external surface of each breast cup 7 and at least one layered back portion 10 with opposing sides (at 15) attached to each side of the breast cups (7). Witkower includes cooperating fastener members (40a,40b) as claimed. (See Witkower, figures 1 and 2; col. 1, line 47

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– col. 2, line 42). Witkower further includes adjustable means (50,51 as seen in figure 1 and col. 2, lines 42-47). The brassiere of Witkower includes shudder straps 33 and the drawstring mechanism with the first strap and second connecting mate portion as claimed (50,53,51,52). The breast cup side edges are connected to the back portions as broadly claimed through the straps 11 and 14 as in figures 1 and 2. The claim does not state that the back portion is a single or continuous strap or panel. Both panels 10 are the “back portion” as broadly claimed. Witkower discloses the support member as having the outer peripheral edge (at 40a in figure 1) and the adjustable means 40b which then connects it to the back portion through the shoulder straps as broadly claimed. The attachment of the fastener and support member through the shoulder strap to the back 10 secures the apparatus about the wearer as broadly claimed.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-6, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Witkower in view of Chen (US 6,406,351).

Witkower discloses the invention substantially as claimed. However, Witkower does not specifically disclose the foam padding in the breast cup as claimed. Foam padding in breast cups of brassieres is well known as seen in Chen. Chen discloses the brassiere cup with foam 20 for comfort and support to the wearer in addition to a smooth

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aesthetically pleasing appearance. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cup of Witkower to include foam in a breast cup for a smooth appearance and comfort to the wearer. (See Chen, col. 2, line 22). Chen also does not specifically disclose the use of memory, viscoelastic foam. Such foams are well known in garment manufacturing for their smooth appearance and cushioning structure. The substitution of different foam materials for each other is well known such as is acknowledged in applicant's specification on page 4 where it is stated that viscoelastic or any other suitable foam can be used. NO criticality was given for the use of a specific type of foam over another such as the use of the viscoelastic foam over any other type of foam. One of ordinary skill in the art would have had the ability to select any desired foam material, such as a viscoelastic foam, in order to achieve the benefits of that foam material within the brassiere of Witkower. Such a selection would have been done in order to achieve a desired aesthetic effect or level of comfort to the wearer. Such a selection would have been a matter of design choice. It is well known that the selection of known materials in order to achieve a known benefit of that material within a finished product is within the skill of one of ordinary skill in the art as a selection of a known material as design expedient of one of ordinary skill in the art. In re Leshin 125 USPQ 416.

Claims 1 and 14 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claim 2-6,8-13 and 15-23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. None of the cited references disclose the pressure points as claimed in claim 8.

***Response to Arguments***

Applicant's arguments filed 8-8-05 have been fully considered but they are not persuasive.

In regard to applicant's Remarks of page 8 concerning the rejection under 35 USC 102, Witkower does disclose the semi-circular support members covering at least the lower section of each breast cup made of strong, flexible, rigid material as broadly claimed in that It is made of a general brassiere material of the time which is a cotton woven material. Such a material is rigid, flexible and strong as broadly claimed in that it is strong enough to perform the disclosed function of supporting the wearer's breasts in as much as applicant's. Applicant's claim 5 has not adequately claimed the back panel as being "continuous: as argued in the remarks. The claim does not claim the back portion as being a continuous or of a single piece construction. It is not clear as to what applicant is arguing in the first paragraph (italicized) remarks in regard to the hook and eye. The cup members and the support fasteners attach the bra in place as broadly claimed through the shoulders traps to the back portion (10). Applicant is arguing more than what has been claimed in regard to the "continuous back portion". The claim should be amended to specifically claim the exact structure



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of the invention avoiding purely functional language limitations. In regard to the foam, applicant's specification states that any type of foam can be used including memory foam. Applicant is arguing more that what has been disclosed and claimed. Applicant has not given specific criticality statements as to why the memory foam must be used.

The substitution of all types of foam materials for one another is well known such as was disclosed in applicant's specification that any foam including a memory foam can be used. Therefore, the substitution of a memory foam for the foam of Chen would be well known to one of ordinary skill in the art.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gloria Hale  
Primary Examiner  
Art Unit 3765

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REPLACEMENT SHEET

Approved  
08/10/25/05

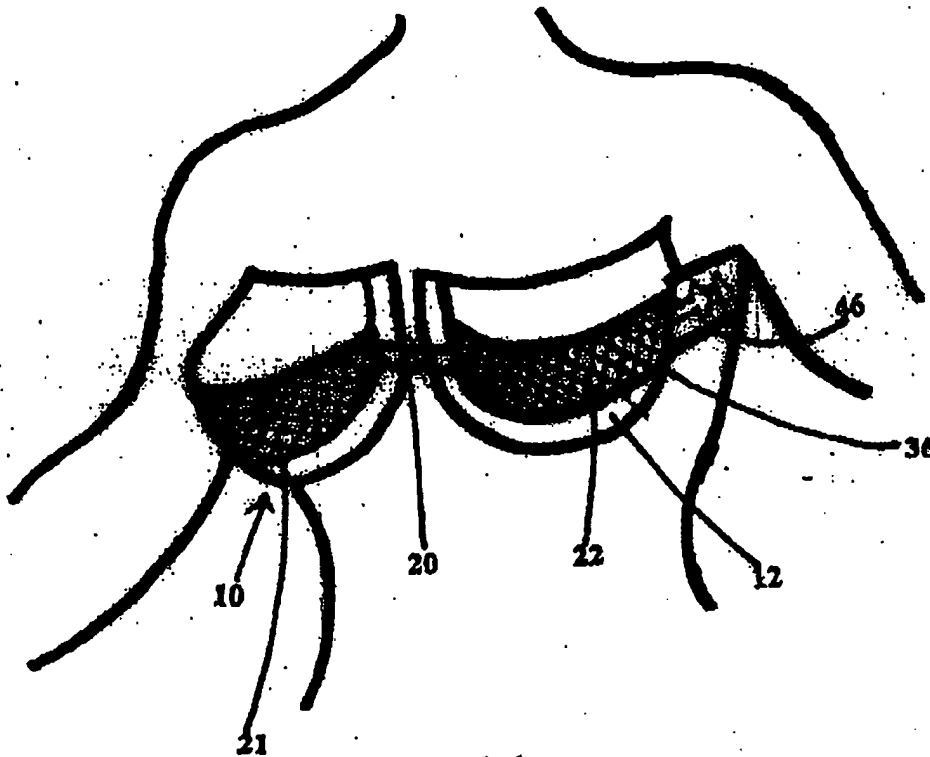


FIG. 1

USPTO  
2005/08/08